Supreme Court, U.S.
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No. 02-1562

IN THE

Supreme Court of the United States

MARGARET A. MADIGAN,

Petitioner,

v.

KRAFT FOODS NORTH AMERICA, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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STATEMENT PURSUANT TO RULE 29.6

Nabisco Brands, Inc., was subsequently known as Nabisco Holdings Corp., which was succeeded through merger by Kraft Foods North America, Inc. Respondent Kraft Foods North America, Inc. is wholly-owned by Kraft Foods, Inc. Kraft Foods, Inc. is a subsidiary of Altria Group, Inc., formerly known as Phillip Morris Companies, Inc. Altria Group. and Kraft Foods, Inc. are publicly traded.

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REASONS FOR DENYING THE WRIT

In her Petition, the Petitioner asserts that there are ten separate questions presented for review. However, as discussed in further detail below, the crux of the Petitioner's questions appear to revolve around the fact that all of her claims were dismissed by the District Court at various stages in the proceedings before the District Court. The United States Court of Appeals for the Sixth Circuit properly affirmed the actions of the District Court, to the extent those actions were before it. That decision by the Court of Appeals does not demonstrate the sort of compelling reasons for granting the Petition for Writ of Certiorari in this case. There is no assertion that the Court of Appeals' decision conflicts with the decision of another Court of Appeals on the same important matter. There is also no assertion that the Court of Appeals so far departed from the accepted and usual course of judicial proceedings that review by this Court is warranted. Likewise, this is not a case where the Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. Thus, the Respondent respectfully urges this Court to deny the Petition for Writ of Certiorari.

I.

THE DECISIONS OF THE COURTS BELOW WERE CONSISTENT WITH THE RECORD EVIDENCE AND APPLICABLE LAW

Petitioner initially filed a "bare bones" pro se Complaint against Respondent in the United States District Court for the Northern District of Ohio on November 20, 2000, alleging claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* ("Title VII"), the Age Discrimination Employment Act, 29 U.S.C. § 621, *et seq.* ("ADEA") and the Americans with Disabilities Act, 42 U.S.C. § 12111, *et seq.* ("ADA"). Because that Complaint failed to state any operative facts to support Petitioner's legal conclusions, Respondent filed a motion for more definite statement, and Petitioner was ordered to file an amended complaint. In response, Petitioner filed two separate Amended Complaints on February 15, 2001. In one of her Amended Complaints, she provided factual allegations in an effort to support her claims under Title VII, the ADEA and the ADA. In the other Amended Complaint, she attempted to add claims for wrongful discharge and constructive discharge in violation of Executive Order 503, 38 U.S.C. § 4212 and a claim under the Occupational Safety and Health Act of 1970 ("OSHA"). The District Court granted Respondent's Motion to Dismiss the Second Amended Complaint as there is no Executive Order 503, 38 U.S.C. § 4212 pertains to Veterans Benefits and Petitioner did not allege she was a veteran, and there is no private right of action for injured employees under OSHA.

Subsequently, discovery was completed and Respondent filed a Motion for Summary Judgment on all remaining counts of Petitioner's Amended Complaint. That Motion was based upon Petitioner's own sworn deposition testimony and documents utilized at her deposition. The summary judgment issue was fully briefed by the parties, and on February 19, 2002, the District Court granted summary judgment to Respondent on all of Petitioner's claims. As to the Title VII claim, the District Court held that Petitioner never alleged the basis for that claim or presented any facts to show that her discharge was motivated by discrimination based on a protected class. As to Petitioner's ADEA claim, the District Court held that although she could arguably establish a prima facie case, she could not establish that Respondent's legitimate non-discriminatory reasons for her termination were a pretext for intentional age discrimination. Finally, as to Petitioner's ADA claim, the District Court found that even if it assumed Petitioner has multiple sclerosis and it is a physical impairment, she could not prove that it substantially limited any major life activities, and that Respondent's alleged failure to accommodate her condition was Petitioner's fault, because she never provided requested medical documentation to demonstrate that she was disabled and that an accommodation was needed.

Petitioner appealed the District Court's Order granting summary judgment to the United States Court of Appeals for the Sixth Circuit. Significantly, Petitioner did not appeal the District Court's prior Order dismissing the other claims she attempted to assert in her Second Amended Complaint. On appeal, after briefing by the parties, the Court of Appeals ruled on the Briefs and entered an Order affirming the District Court's entry of summary judgment for the reasons stated in the District Court's opinion. Petitioner sought rehearing by

the Court of Appeals, which was denied. Thereafter, Petitioner filed her present Petition with this Court.

As the foregoing demonstrates, there were no procedural errors in the processing of this case by the Courts below. Thus, any alleged procedural irregularities cannot form the basis for the present Petition. In addition, the record evidence in this case clearly supports the actions of the Courts below.

Unfortunately, the tortured manner in which the Petitioner argues her position makes it extremely difficult to separate her factual arguments from her legal arguments. In addition, many of the generalized statements contained in the Petition do not in any way relate to the claims in this case. Furthermore, many of Petitioner's factual assertions are simply not supported by proper record evidence. Due to the disjointed nature of Petitioner's arguments, it is difficult to address every factual misstatement contained in the Petition in a cohesive fashion. Therefore, Respondent will instead provide this Court with a brief overview of the facts that are relevant to the entry of summary judgment below, and will thereafter address some of the more significant factual misstatements contained in the Petition when addressing the ten separate questions for review asserted by the Petitioner.

Petitioner began working as a traffic clerk in Respondent's Seville, Ohio Plant in 1986. Although her performance appraisals were generally satisfactory prior to 1996, she was continually advised about the need to improve her teamwork and communication skills. In 1996, Petitioner received a poor performance appraisal from her new supervisor which noted a number of specific deficiencies. Unfortunately, she would never take responsibility for her

performance problems. In 1995, Petitioner presented to Human Resources a 1992 letter from a hospital stating that her physical condition "seems to fit best with a demyelinating illness such as multiple sclerosis." The letter indicated that she should avoid situations which could potentially increase her body temperature. After she presented the letter to Human Resources, she began complaining that her workspace was too hot, and that she needed air conditioning or better ventilation. She also complained about employees smoking in the area because it bothered her, although she did not believe it exacerbated her condition. At one point, she unilaterally relocated herself to a vacant supervisors office from which she was asked to leave. Although certain efforts were made to address the smoking, temperature and air flow issues, she did not feel those efforts were sufficient. On another occasion, she moved file cabinets to build walls around her workspace, which had to removed. After she was reprimanded for that behavior, her sister wrote a letter to the Respondent criticizing the reprimand and stating that her condition was being exacerbated by a hostile work environment, and that previously presented standards for the work environment had not been met. In response to that letter, Respondent noted there was no request for a job accommodation from a physician in Petitioner's personnel file. Petitioner was informed of Respondent's ADA policy and instructed to have a job accommodation request form completed by her physician, so Respondent could work with her to implement a reasonable accommodation. However, Petitioner never returned the job accommodation request form to Respondent despite repeated requests for same. Unfortunately, during this same time, Petitioner's job performance continued to decline. A formal improvement plan with periodic monitoring was established. After her performance showed no improvement, her employment was terminated in September, 1997.

Against the foregoing factual background, the District Court found that none of Petitioner's claims could survive summary judgment. As to her Title VII claim, Petitioner never set forth any facts to demonstrate she was treated unfairly because of some protected status, and in any event the Respondent had demonstrated a legitimate, non-discriminatory reason for her termination. Similarly, Petitioner was unable to demonstrate that the reasons for terminating her employment were a pretext for intentional age discrimination, which required the dismissal of her ADEA claim. Finally, as to Petitioner's ADA claim, Respondent never received any conclusive medical documentation that she had multiple sclerosis while employed by Respondent, and there was no evidence that she was a qualified individual with a disability. Furthermore, she never followed Respondent's established procedure for requesting an accommodation. Thus, her ADA claim was properly dismissed. The Sixth Circuit Court of Appeals agreed with the District Court's analysis of the facts and application of the law in this case.

II.

THE QUESTIONS RAISED BY PETITIONER DO NOT REQUIRE REVIEW BY THIS COURT

None of the specific questions presented set forth in the Petition provide a reason for granting that Petition.

In Question No. 1, Petitioner apparently raises a question as to whether her sister could speak on her behalf in requesting accommodations under the ADA. That question is not at issue in this case. Even if other people in addition to Petitioner had raised the issue of an alleged disability and

the need for accommodations, the Respondent was entitled to request appropriate medical documentation from the Petitioner to confirm the nature of her disability, whether she was a qualified individual with a disability, and whether the accommodations requested were appropriate. 29 C.F.R. § 1630.14; *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).

The second question Petitioner presents for review appears to argue that if an individual is exposed to toxins due to a failure to accommodate a disability, the statute of limitations should be extended. Again, that issue is not raised in this case. The only claim of toxic exposure ever asserted by the Petitioner before the District Court was arguably her claim under OSHA. However, that claim was properly dismissed earlier in the proceedings. Furthermore, Petitioner never appealed from that Order in her appeal to the Court of Appeals. Thus, that issue cannot be properly raised at this time before this Court. In addition, the question posed by Petitioner is nonsensical and has no legal basis.

In Question No. 3, it appears that Petitioner is claiming that she should not be required to adhere to Court procedure because she has a disability and is proceeding pro se. However, the record in this case is replete with instances where the District Court permitted Petitioner substantial leeway in presenting her claims. The fact that she is proceeding pro se does not alleviate her of the obligation to prove her claims. Indeed, this Court has also granted Petitioner leeway with respect to procedural matters, as her Petition was initially presented to this Court on February 18, 2003, but she was permitted to cure various irregularities in her submission before the docketing of the Petition on April 30, 2003.

In Question No. 4, it appears that Petitioner is arguing that proof of a prima facie case under the ADEA should be sufficient to proceed to trial. However, it is well established that once an employer presents a legitimate, non-discriminatory reason for actions taken, the ultimate burden of proof is on the plaintiff to prove that the proffered reasons are pretextual and that the actual reason for the action being challenged was age discrimination. *O'Conner v. Consolidated Coin Caterers Corp.*, 517 U.S. 308 (1996).

In Question No. 5, it appears that Petitioner is arguing that an acknowledgment of an agreement to accommodate is sufficient to establish an ADA claim. However, as noted in response to Question No. 1 above, it is well established that when an employer is presented with a request for an accommodation, the employer is entitled to obtain medical information to confirm that the employee has a disability, is a qualified person with a disability, and requires the requested accommodation.

In Question No. 6, it appears that Petitioner is arguing that filing a toxic tort claim should be considered a request for extension of a statute of limitations. This question is non-sensical in light of the actual claims asserted by Petitioner in this case. The only toxic exposure claim she ever sought to pursue was a claim under OSHA, which was dismissed at an early stage in the proceedings below. Furthermore, a statute of limitations is considered jurisdictional, and cannot be extended merely at the request of one of the parties.

In Question No. 7, it appears that Petitioner is arguing that although federal agencies have determined that a consumable product is safe, because she believes a product is not safe, some undefined statute of limitation should be

extended. Again, that question is not at issue in this case, and the premise for same is totally nonsensical.

In Question No. 8, it appears that Petitioner is basically restating the same issue posed in Question No. 1. For the reasons discussed above, there is no validity to that issue.

In Question No. 9, it appears the Petitioner is challenging the fact that she was offered severance pay in exchange for executing a release. However, in this case, Petitioner never in fact executed any release and never obtained any severance pay. Furthermore, the Respondent has never alleged that Petitioner executed a release that would bar her claims. Thus, there is no basis for Petitioner to seek to challenge the content of the Respondent's release. Furthermore, there is no legal basis for the Petitioner to claim that an employer offering severance pay cannot seek to obtain a release in exchange for that payment.

Finally, in Question No. 10, it appears that Petitioner is asserting that Respondent should not be awarded attorneys fees because it perpetuated this litigation by not responding to the EEOC. First, that issue is premature, as the Respondent has not as yet sought or obtained an award of attorneys fees against the Petitioner. Furthermore, the Respondent is not required to respond to the EEOC. Many times the EEOC will issue a right to sue notice to an individual without ever obtaining any information from the respondent. Perhaps with this issue the Petitioner is anticipating that the Respondent will seek to recover its fees in this case. Although the Petitioner has never had a colorable claim against the Respondent, the Respondent has been required to defend against her frivolous claims through the District Court, the Court of Appeals, and now before this Court. Thus, when

the merits of this case have been finally resolved, it is possible that the Respondent will indeed seek to recover attorneys fees and costs from the Petitioner.

As discussed above, none of the questions presented by Petitioner for review by this Court rise to a level which would require this Court's review of same. Petitioner's unfounded claims were fully reviewed by the District Court and properly dismissed. Likewise, her claims were fully reviewed by the Court of Appeals and properly dismissed. A similar result is clearly warranted before this Court.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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